IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9843 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SWAMI SADANANDJI GURUDUTT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9843 of 2001

MR JK PARMAR for Petitioner No. 1

MR SS PATEL, APP, for the Respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2002

ORAL JUDGEMENT

1. The applicant herein is an accused in Criminal Case No.94 of 2000, pending before the learned Judicial Magistrate, First Class, Harij, and is facing charges for offences punishable under Sections 33EEC(b), 33EEC(c) and

33I(1)(a) of the Drugs and Cosmetics Act. He is alleged to have dispensed medicines against the provision of law. He approaches this Court with this application praying for transfer of the case from the Court of learned Judicial Magistrate, First Class, Harij to Magisterial Court, at Baroda. It is urged that he is physically handicapped by 75% and it is difficult for him to remain present before learned Judicial Magistrate, First Class, Harij since he himself is staying at Baroda. It is urged that he had made an application before learned Judicial Magistrate, First Class, Harij, for dispensing with his personal appearance in the said criminal case, which application came to be rejected. A revision application was preferred before Sessions Court, Mehsana. That also came to be dismissed by order dated the 22nd October, 2001 and, therefore, present application is preferred.

2. Learned Additional Public Prosecutor, on notice, has made inquiries and states that the contention regarding the applicant suffering from 75% physical disablement is correct. He had sustained a paralytic attack on 1.8.2001 while he was going from Baroda to Harij. This is subsequent to the lodging of the case. Since then, he is staying at Baroda.

3. In the application before the learned Judicial Magistrate, First Class, it is categorically stated by the applicant that he does not dispute his identity and, therefore, he may be exempted from appearing before the learned Judicial Magistrate, First Class.

4. Having regard to the facts of the case, since the applicant is suffering from 75% physical disablement and is staying at Baroda, it can be appreciated that he will have difficulty in attending the Court at Harij at a distance of about 250 kms. However, if the case is transferred from Harij to Baroda, it would cause lot of inconvenience to the prosecution witnesses. Under the circumstances, it would serve the ends of justice better if the applicant is granted exemption from appearing before the learned Judicial Magistrate, First Class, at the time of hearing of the Criminal Case. It would, however, be open for the learned Judicial Magistrate, First Class to summon, on any given date, if some special eventuality requires his presence or at the time of pronouncement of the judgment. The applicant shall appear before the learned Judicial Magistrate, First Class, as and when he is summoned. It would also be open to the applicant to voluntarily appear before the learned Judicial Magistrate at the time of the trial if he so desires. With these directions, this application is

disposed of. Rule is made absolute.

5. Direct service is permitted.

[A.L. DAVE, J.]
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